themselves. In my view this is what plaintiff is here endeavouring to do. I had some difficulty at first in understanding in what way the answers to these proposed interrogatories would assist in proving the plaintiff's case at all. Mr Shearn's contention, as I understood him, was that if he could obtain a definite statement from the defendants that they had not themselves performed the services alleged to have been performed by the plaintiff and had not procured anyone other than plaintiff to perform them then that would raise an inference that it must have been the plaintiff himself who performed such services. He would thus be able to prove part of his case by inference instead of calling evidence on this point.

I doubt whether, in any case, such interrogatories would be permissible, but I am quite satisfied that they are not permissible in the present case because of the form of the plaint. The interrogatories refer, in the first place, to "the lightermen referred to in paragraph 9 of the plaint" and secondly to "the services referred to in paragraphs 7 and 10 of the plaint." When one looks at the relevant paragraphs of the plaint and to the particulars thereunder all one can find is a general reference to "lightermen supplied" for certain sums between certain dates and to charges in respect of handling unspecified goods also between certain dates. The particulars given are, in each case, particulars of payments, not particulars of lightermen or services. To my mind, it is impossible to expect the defendants to give any kind of categorical answer in respect of such wide allegations. If the plaintiff was asking about the employment of a specified lightermen in respect of a specified journey on a specified day; or the handling of specified goods ex a specified ship on a specified day then one might have to consider whether or not it might not be necessary for the disposal of the suit or for saving costs to require an answer. But looking at the claims in the suit and the paragraphs of the plaint in respect of which the questions are asked, I am satisfied that the interrogatories are not such as the defendants ought to be asked to answer. I agree with the learned Registrar that these interrogatories are really in the nature of cross-examination.

Reference was made in the course of the arguments to a notice to admit facts which had been served by the plaintiff on the defendants and to the defendants' admissions thereon. I observe that in the notice to admit facts there is a paragraph to the effect that in default of the defendants giving the required admissions it is the intention of the plaintiff to apply for leave to deliver interrogatories. In my opinion, refusal by the defendants to admit facts is not a ground upon which interrogatories should be allowed and is quite irrelevant to that question. The penalty, if any, for failure to admit facts is provided for in section 149 (iii) of the Civil Procedure Code and is purely a matter of costs. The only way in which the question of admissions becomes relevant to the question of interrogatories is under section 133 (iii) of the Civil Procedure Code which provides that in deciding whether interrogatories should be allowed the Court shall take into account any offer which may be made by the party to be interrogated to make admissions. In this case the defendants have made certain admissions but because they have qualified them they are not quite in the form which the plaintiff likes. In my view, the fact that the defendants have made these admissions, even though they are in a qualified form, is an additional ground for refusing to allow the plaintiff to interrogate on the same points.

In conclusion I would refer to a passage in the grounds of decision of the learned Registrar which reads as follows :—

> "The plaintiff contends that although the answers will not go to prove his case they will help to corroborate plaintiff's version by raising the probabilities in his favour."

Before the Registrar, therefore, the plaintiff appears to have come very near to admitting that what he was asking for was "mere evidence of the facts in dispute but not a part of the facts themselves" within the *dictum* of Lord Esher above quoted.

Though for somewhat different reasons I have reached the same conclusion as was reached by the learned Registrar. His decision is, therefore, upheld and the interrogatories are disallowed.

Application dismissed.

Solicitors : *Shearn, Delamore & Co.*

WONG ENG FOOK v. HO KIAT MOI (f)

[A. Cr. J. (Russell J.) April 5, 1949]

[K. L. — Criminal Appeal No. 10 of 1949]

Criminal Procedure Code (Cap. 6), ss. 307 and 362(i) — Maintenance of wife — Appeal from order of Magistrate — Whether order of Magistrate was order in a criminal cause or matter — Courts Ordinance, 1948, s. 50(2).

In this case the appellant appealed against an order of the Magistrate at Kuala Lumpur who had ordered him to pay $80 within one week or in default undergo six weeks' imprisonment. The learned Magistrate had found that the appellant had wilfully neglected to comply with a previous order for maintenance of his wife and child. One of the questions to be decided was whether the appeal should have been made under s. 307 of the Criminal Procedure Code or under the Civil Procedure Code.

Held: (1) the order of the Magistrate was an order pronounced in a criminal cause or matter and therefore the appeal was properly brought under s. 307 of the Criminal Procedure Code; (2) on the facts, the Magistrate could have come to no other conclusion than he did and the appeal must therefore be dismissed.

Cases referred to:—

(1) *Chew Cheng Swee v. Chan Chye Neo* (1932) M.L.J. 5.

(2) *Seaman v. Burley* (1896) 2 Q.B. 344.

(3) *Woosey v. Woosey* (1938) M.L.J. 100.

(4) *Rex v. Richardson* (1909) 2 K.B. 856.

(5) *Amand v. Home Secretary and Minister of Defence of Royal Netherlands Government* (1943) A.C. 147.

(6) *Rex v. Justices of the Appeals Committee of the Court of London Quarter Sessions* (1946) 1 All E.R. 129.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

A. M. I. Austin (D. P. P.) for the respondent.

Russell J. : —The appellant was ordered by the Magistrate at Kuala Lumpur on the 29th of October, 1948, to pay to the respondent, his wife, a sum of $40 per month for the maintenance of herself and her child under section 360 of the Criminal Procedure Code. The appellant did not appeal against this order.

On the 17th of December, 1948, the respondent filed an affidavit calling upon the appellant, who had failed to make any payments under the above order, to show cause why he should not be committed to prison for disobeying the said order.

Section 362(i) of the Criminal Procedure Code reads as follows:—

> 362 (i). If such person shall wilfully neglect to comply with any such order, the Magistrate may, for every breach of the order, by warrant, direct the amount due to be levied in the manner by law provided for levying fines imposed by Magistrates, or may sentence him to imprisonment of either description for a term not exceeding one month for each month's allowance remaining unpaid.
>
> Provided that if any person against whom an order has been made for the maintenance of his wife offers to maintain his wife on condition of her living with him, and his wife shall refuse to live with him, it shall be lawful to consider any grounds of refusal stated by such wife, and the Magistrate may make the order aforesaid notwithstanding such offer, if he be satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

The appellant was called upon to appear on the 24th of December, 1948, but sent a medical certificate and the Magistrate postponed the hearing until the 7th January, 1949.

On the 5th of January, 1949, the appellant sent a letter to the Court requesting a further postponement to January 21st but the request being refused he filed an affidavit on the following day asking for the recission of the order for maintenance made on October 29th under section 362 of the Criminal Procedure Code on the ground that the respondent had refused to live with him without any sufficient reason. This affidavit was considered by the Magistrate on the 7th of January and he was of the opinion that the material facts alleged therein were within the knowledge of the appellant on the 29th of October and that the sole purpose of the affidavit was to delay and defeat the maintenance order made against him. The Magistrate was further of the opinion that the appellant had wilfully neglected to comply with the order without sufficient cause and he made a further order ordering the appellant to pay $80 within one week or in default undergo six weeks' civil imprisonment.

On the 11th of January the appellant filed a notice of appeal against this order under section 307 of the Criminal Procedure Code and on the 24th of February he filed his memorandum of appeal.

Section 50(2) of the Courts Ordinance, 1948, in dealing with the appellate civil jurisdiction of the High Court states:—

> An appeal shall lie from any decision of a Sessions Court or Magistrates' Court in any proceedings relating to maintenance of wives or children, irrespective of the amount involved.

I had therefore to decide whether the appellant was entitled to file a criminal appeal under section 307 of the Criminal Procedure Code against the order of the Magistrate ordering him to pay $80 within one week or in default undergo six weeks' civil imprisonment or whether he should have filed an appeal under the Civil Procedure Code.

In the case of *Chew Cheng Swee v. Chan Chye Neo*[1] the members of the appellate Court of the Straits Settlements were of the opinion that maintenance proceedings in which an order can be made for the payment of an allowance were a civil matter, and if an order for payment is made, a civil debt is created. Similarly an application to vary the amount of an allowance already ordered to be paid was held to be a civil matter since the only order which can be made on such an application is that the order is varied or affirmed. When, however, the application is one to enforce payment of arrears due under an order for maintenance the Court was of the opinion that the application was a criminal cause or matter in view of the fact that the Court may either levy or sentence the defaulter to a term of imprisonment. This decision was based upon the English case of *Seaman v. Burley*[2] in which it was held that a judgment on a special case stated by the justices on an application to enforce

payment of a poor rate by warrant of distress was a judgment in a criminal cause or matter within section 47 of the Judicature Act 1873 inasmuch as the proceedings before the justices might have ended in imprisonment of the person in default.

In the case of *Woosey v. Woosey*[3] McElwaine C.J. was of the opinion that proceedings under sub-section 4 of section 37 of the Straits Settlements Minor Offences Ordinance were criminal and this sub-section is almost identical with the section 362(i) of the Criminal Procedure Code. The learned Chief Justice also referred to the case of *Rex v. Richardson*[4] where Lord Alverstone in considering the non-payment by a husband to his wife of a weekly sum by way of alimony, ordered to be paid under the Summary Jurisdiction (Married Women) Act 1899, stated :—

> . . . . the order committing the man to prison for non payment is in the nature of a criminal conviction, the disobedience of the earlier order being treated as contempt which may be purged by payment.

The decision in the case of *Seaman v. Burley*[2] was approved by the House of Lords in the case of *Amand v. Home Secretary and Minister of Defence of Royal Netherlands Government*[5] where Their Lordships held that the test as to whether a proceeding was a criminal cause or matter depended upon the nature and character of the proceeding and if the matter was one the direct outcome of which might be the trial of the person charged and his possible punishment for an alleged offence the matter was criminal. This latter case was applied in the case of *Rex v. Justices of the Appeals Committee of the Court of London Quarter Sessions*[6].

Accordingly, I held that the order of the Magistrate dated the 7th of January ordering the appellant to pay $80 or in default undergo six weeks' imprisonment was an order pronounced by him in a criminal cause or matter.

Having formed this opinion, although sub-section 2 of section 50 of the Court Ordinance, 1948, dealing with civil appeals from Sessions and Magistrates Courts states an appeal shall lie in *any* proceedings relating to maintenance of wives and children, it seems to me clear that this sub-section can have no application to any criminal cause or matter, and I therefore held that this appeal was properly brought under section 307 of the Criminal Procedure Code. It follows therefore that a signed copy of the record should have been transmitted to the Public Prosecutor under Section 308 of the same Code.

As to the merits of the appeal, I was satisfied that the Magistrate could have come to no other conclusion than he did, namely, that the appellant had wilfully neglected to comply for no sufficient cause with the order for maintenance made on the 29th of October.

Finally, the order of the 7th of January stated that in default of payment the appellant was to undergo six weeks' civil imprisonment and in section 362(i) quoted above imprisonment of either description means either rigorous imprisonment with hard labour or simple imprisonment without hard labour as defined in section 53 of the Penal Code.

I therefore dismissed the appeal, and as the appellant had paid nothing towards the support of his wife and child since the making of the order, I varied the Magistrate's order to an order for payment by the appellant of $80 within three days, in default the appellant to serve a term of six weeks' simple imprisonment.

Appeal dismissed.

CHUA AIK v. PUBLIC PROSECUTOR

[A. Cr. J. (Russell J.) April 8, 1949]

[K. L. — Magistrate's Appeal No. 14 of 1949]

Emergency (Registration Areas) Regulations, 1948, reg. 18(1)(a) — Charge of failing to register and obtain an identity card — Mentally deranged person — Plea of guilty.

In this case the appellant was convicted of the offence of failing to register and obtain an identity card under Regulation 18(1)(a) of the Emergency (Registration Areas) Regulations, 1948. He was said to have pleaded guilty and was fined. It appeared that the appellant was a mentally deranged person and that after his son had applied at the correct time for a registration card on behalf of his father, a registration officer went to the appellant's house but was unable to do so owing to the appellant's condition.

Held: in the circumstances, the conviction must be quashed.

Appellant in person.

M. Suffian (D. P. P.) for the respondent.

Russell J. : — The appellant was one of ten persons convicted by the Magistrate at Klang of the offence of failing to register and obtain an identity card under Regulation 18(1)(a) of the Emergency (Registration Areas) Regulations, 1948. The appellant was said to have pleaded guilty at his trial and was fined $20 and in default was sentenced to seven day's rigorous imprisonment.

The learned Deputy Public Prosecutor, who appeared for the respondent, did not seek to uphold the conviction and called, with the leave of the Court, the Registration Officer, Klang, to give evidence.

This officer stated that the son of the appellant had applied at the correct time for a registration card